XI-HC-78

A.F.R.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....Cr.A.No.95/सन् 2000

(12)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

APPELLANT — Jhagarsai alias Jhagar, aged 50 years, son of Ramsingh, resident of village Bhandar Dei, P.S. Chirmiri, Distt. Koria (C.G.)

Versus

RESPONDENT — State of Chhattisgarh, through Station House Officer, P.S. Chirmiri, Distt. Korea (C.G.)

D.B. : **Hon'ble Shri L.C. Bhadoo and Hon'ble Shri Dhirendra Mishra, JJ.**

23-3-2007

Shri Abhay Tiwari, Advocate for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor, for the respondent/State.

Arguments heard.

Oral judgment dictated on *Dais*

ORAL JUDGMENT

Per L.C.Bhadoo, J. :

This appeal is directed against the judgment of conviction and order of sentence dated 28-3-2000 passed by Additional Sessions Judge, Manendragarh in S.T. No. 314/1999, whereby the learned Additional Sessions Judge after holding accused/appellant guilty for commission of offence under Section 302 of the Indian Penal Code for committing murder of his wife Mangori alias Sukwaria, sentenced him to undergo imprisonment for life and to pay a fine of Rs. 100/-, in default of payment of fine, to further undergo R.I. for 3 months'.

2. Case of the prosecution is that on 25-5-1999, the accused was at his residence with his wife along with their three years old female child, his elder daughter namely Parvati was at the residence of her maternal uncle Shivlal in the same village. At about 8.30 to 9.00 p.m., the accused went to house of his brother-in-law Shivlal along with his three years' daughter. He handed over his three

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years' daughter to Parvati, the elder daughter saying that his mother is vomiting. At that time, accused was shaking. Parvati immediately left for her house to see condition of her mother. When she reached the house, she saw that her mother was lying dead in the house, there was injury on her neck, blood was oozing out of her injury. There was blood on the ground. Seeing this, she started crying, on which, her maternal uncle Shivlal, Nandlal etc. came on the spot, thereafter Devkumar, Rama and others also came. Siddhanath and Rama went to lodge report. Siddhanath lodged report Ex. P-4 in Police Station Chirmiri. Investigating Officer left for the scene of occurrence, prepared the inquest Ex. P-5 on the body of deceased, recorded merg intimation Ex. P-6. Blood stained soil and plain soil was taken into possession from the place of occurrence. While in police custody, accused gave memorandum Ex. P-1, pursuant to which, axe was seized under Ex. P-7. Site plan Ex. P-8 was prepared. Clothes of the deceased were seized under Ex. P-9. Seized articles were sent for chemical examination to Forensic Science Laboratory, Sagar from where, report was received. As per report, axe was found stained with blood. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Manendragarh who in turn committed the case to the Sessions Judge, Ambikapur from where learned Additional Sessions Judge, Manendragarh received the case on transfer for trial.

3. Prosecution in order to establish charge against the accused examined 8 witnesses. Statement of accused was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him. He further stated that he has been falsely implicated in the crime in question. He is innocent, his wife started living with another person. Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused as aforementioned.

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4. We have heard Shri Abhay Tiwari on behalf of the appellant and Shri U.N.S. Deo on behalf of the State.

5. Shri Abhay Tiwari has not disputed homicidal death of Mangori alias Sukwaria. Moreover, P.W. 3 Dr. A.K. Agrawal has stated that he conducted post mortem on the body of Sukwaria on 26-5-1999. There was incised wound on left side of neck in size of 12 x 5 cm as a result of which blood vessels, neck bone, spinal cord, food pipe were cut. There was another incised wound in size of 9 x 4 cm bone deep posterior and above the injury no. 1, injury was caused by sharp and cutting object. Injury No. 1 was fatal to life and injury was sufficient in ordinary course of nature to cause death. Therefore, in view of above evidence, it is established that death of Mangori was homicidal in nature.

6. As far as involvement of the accused-appellant in crime in question is concerned, there is no direct and ocular evidence in this case. Whole case rests on circumstantial evidence.

7. As per settled law, in order to convict an accused based on circumstantial evidence, the Apex Court in the matter of ***Dhananjoy Chatterjee Vs. State of West Bengal*** reported in ***(1994) 2 SCC 220*** held that

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation

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of the Court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

8. Prosecution has tried to establish the crime against the accused from following circumstances:-

i. that, at the time of commission of crime, the accused-appellant and deceased were present at the residence;

ii. that, accused-appellant gave false explanation to P.W. 5 Parvati;

iii. that, accused-appellant absconded from the place of occurrence; and

iv. that, the axe- weapon of offence, was recovered at the instance of the accused-appellant.

9. Shri Abhay Tiwari argued that nobody saw the accused committing murder, therefore, he has been falsely implicated in the crime in question. He further argued that independent witnesses regarding recovery of axe at the instance of the accused-appellant have turned hostile. Therefore, there is no evidence to connect the accused-appellant with the crime in question.

10. On the other hand, Shri Deo supported the judgment of the trial Court.

11. As far as the first and second circumstances are concerned, P.W. 5 Parvati, the elder daughter of the accused-appellant has stated that on the fateful day at about 7 – 8 pm, she was at her maternal uncle Shivlal's house at village Bhandar Dei. At that time, her father-accused came along with her younger sister, asked her to keep her as her mother is vomiting, therefore, she went to her house to see the condition of her mother. When she reached the house, her mother was lying dead on the ground. There was injury on neck, blood was oozing out of the injury. There was blood on the ground. When her father came to her along with her

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	younger sister, he was shaking. She also enquired from her father as to why he was shaking but he did not reply. In the house, she along with her father, mother and younger sister used to reside. In cross-examination, she stated that her maternal uncle's house is at a distance of 20 meters from her house. When her father brought her younger sister in the night, they burnt kerosene lamp. It is incorrect that relations of her father and maternal uncle were not good. P.W. 6 Dev Kumar has stated that Shivlal, brother-in-law of accused informed him that his brother-in-law has committed murder of his sister, therefore, he was asked to inform Choukidar Rama, therefore he informed Rama, they called Siddhanath. Thereafter they lodged report. P.W. 7 Shivlal, brother-in-law of the accused-appellant has stated that on the fateful day, Parvati was at his residence. The accused came and handed over his younger daughter and informed Parvati that her mother is vomiting. Parvati informed him that after handing over younger sister to Parvati, the accused ran away. This witness has not been cross-examined. Even in cross-examination of P.W. 5 Parvati, the defence has not been able to bring any circumstance which makes the evidence of this witness unreliable or untrustworthy. P.W. 5 Parvati is daughter of the accused-appellant, there was no reason for her to give false evidence against her father, that too in a serious offence like murder of her mother. Therefore, from the evidence of P.W. 5 Parvati and P.W. 7 Shivlal, it is established that the accused-appellant and the deceased were at their residence. Accused came to Parvati at his brother-in-law's house, handed over his younger daughter aged 3 years to Parvati and gave false explanation that her mother is vomiting, whereas in fact, she was attacked with an axe and she was already dead. The accused-appellant was at his residence, therefore, it was within his special knowledge that how his wife sustained fatal injury. As per provisions of Section 106 of the Indian Evidence Act, burden was	

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on him to explain those circumstances, on the contrary, he gave false information to his daughter Parvati (P.W. 5) that Mangori is vomiting. The accused has failed to discharge the burden which was at his shoulder as per provisions of Section 106 of Indian Evidence Act, therefore, it is additional circumstance to connect the accused with the crime in question.

12. As far as third circumstance i.e. accused-appellant absconded from the place of occurrence is concerned, P.W. 5 Parvati has stated that after handing over younger sister to her, the accused ran away. When she reached to the house of the accused, Mangori was lying in dead condition, accused was not present there. He gave a false explanation in the statement under Section 313 Cr.P.C. that he went to village Mangora. It is also established from the evidence of P.W. 5 Parvati that when the accused came along with her younger sister to hand over her to Parvati, he was shaking, thereafter he ran away, therefore, this conduct of the accused-appellant is suggestive of the fact that this accused was involved in the crime in question.

13. As far as fourth circumstance i.e. the axe, the weapon of offence was recovered at the instance of the accused, is concerned, it is true that P.W. 1 Dandpani and P.W. 2 Bhaguni have turned hostile. But the Investigating Officer P.W. 8 J.S. Bhadoriya has stated that the accused gave memorandum of Ex. P-1 on 31-5-1999 that he has kept the axe-weapon of offence in a corner of the house and he will get the same recovered, in pursuance of the same, the accused took him to the house and got the axe recovered. Seizure memo Ex. P-7 was prepared by him. The axe was stained with blood. The axe was sent for examination under Ex. P-10. Dr. A.K. Agrawal, (P.W. 3) has stated that the axe in question was sent to him for examination. He examined the axe and gave opinion that injury found on the neck of the deceased could be caused by the axe in question. There is no

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reason to disbelieve the evidence of the Investigating officer J.S. Bhadoria (P.W. 8) that the accused memorandum Ex. P-1 regarding the place where he kept the axe and pursuant to same, the axe was recovered, the same was sent for examination and Dr. A.K. Agrawal (P.W. 3) gave opinion that the injury which was found on the neck of the deceased could be caused by that axe.

14. For the foregoing reasons that the accused and the deceased were residing together, the accused has not explained as to how his wife sustained injuries, moreover the conduct of the accused that he took his younger daughter to his elder daughter who at that time was at the residence of her maternal uncle, handed over his younger daughter to Parvati, gave false explanation that mother of Parvati is vomiting, the accused ran away, when she went to her house, she found that explanation given by the accused was false, the axe- weapon of offence was recovered at the instance of the accused, axe was sent to F.S.L. Sagar, same was found stained with blood, therefore, from these circumstances an irresistible conclusion can be drawn that the accused was author of the crime in question.

15. In the result, we do not find any illegality or infirmity in the impugned judgment convicting and sentencing the accused under Section 302 of I.P.C.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge